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School Tells Fed. Circ. PTAB Botched Samsung Sensor Case

By **Kelcee Griffis**

Law360, New York (January 11, 2017, 4:24 PM EST) -- Ontario-based Queen's University at Kingston urged the Federal Circuit on Monday to undo a Patent Trial and Appeal Board decision that invalidated claims related to eye sensor technology that the school had accused Samsung of violating, saying the board messed up the review process.

In the appellate brief, the university said two separate PTAB determinations, which held that two claims related to two of the school's patents covering eye-tracking sensors were anticipated, should be reversed.

"The Board violated Queen's University's due process rights ... by relying on new grounds of unpatentability and new evidence while simultaneously refusing Queen's University any opportunity to present rebuttal evidence," the brief said.

The university sued Samsung in 2014 in the Eastern District of Texas, alleging infringement of four patents related to "attentive user interfaces" that use eye contact to enable devices to communicate with users. For instance, certain patents describe a TV that pauses programs when the user's eyes are not on the screen and resumes playing when the user looks at it.

The complaint alleges that Samsung's Galaxy smartphones infringe the four patents. The devices include a feature called SmartPause that uses the front camera to sense when users are looking at them and pause videos when they look away.

The first two of Queen's University's patents, U.S. Patent Numbers 8,322,856 and 8,672,482, were largely invalidated by the PTAB in August. The board also instituted review of and invalidated two claims in the two remaining patents, U.S. Patent Nos. 7,762,665 and 8,096,660, based on the grounds of anticipation and obviousness.

The university now says that Samsung introduced new aspects of the "Goldstein" prior art after its first petitions before the board. The PTAB's final decisions should not have ultimately relied on those aspects that Samsung introduced later, the university contended.

The Goldstein technology described an eye tracker that was less sophisticated and only covered part of the challenged technology, Queen's University said.

Its own patents, it says, include both eye-tracking and eye contact sensors that can tell when and where

human eyes are looking at it. It also says Samsung can't prove the Goldstein patent could be integrated with smartphone technology.

“While the appealed claims require only a sensor, and do not explicitly recite either an eye contact sensor or an eye tracking sensor, the difference between the two is important. The alleged prior art ... only discloses an eye tracker,” according to the brief.

The university further argued that the board process was unfair because it says Samsung changed theories in its contentions of how the Goldstein patent applies to Queen's University's patents. It says it wasn’t given an adequate chance to respond to those filings.

“Throughout the IPR proceedings, Queen’s University was denied any opportunity to rebut the evidence that supported the board’s ultimate basis for finding unpatentability,” according to the brief.

Counsel for the parties could not be reached for comment Wednesday.

Queen's University is represented by Ian B. Crosby and Shawn Daniel Blackburn of Susman Godfrey LLP and Michelle Kingham Holoubek and Robert Greene Sterne of Sterne Kessler Goldstein & Fox PLLC.

Samsung is represented by Michael J. McKeon and Craig E. Countryman of Fish & Richardson PC.

The patents-in-suit are U.S. Patent Nos. 7,762,665 and 8,096,660.

The case is Queen's University at Kingston v. Samsung Electronics Co., Ltd., case number 16-2723, before the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Ryan Davis. Editing by Emily Kokoll.

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